

**SNOHOMISH COUNTY DISTRICT COURT  
STATE OF WASHINGTON  
SOUTH DIVISION**

<b>STATE OF WASHINGTON,</b>	}	<b>CAUSE NO. 10326A-09D</b>
	}	
Plaintiff,	}	<b>MEMORANDUM DECISION</b>
	}	
v.	}	
	}	
<b>VICTOR AYALA,</b>	}	
	}	
Defendant.	}	

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**I. INTRODUCTION**

Defendant seeks suppression of breath-alcohol test results under Evidence Rule (ER) 702. The gravamen of the defense argument is that a test result admitted into evidence without an uncertainties calculation is not scientifically reliable and misleads, rather than assists, the fact finder. Prosecutors counter that the absence of an uncertainties calculation does not preclude admissibility of the test result under RCW 46.61.506(4) and that the reliability of that admitted test result may always be challenged by the defense. For the reasons set forth below, Defense Motion to Suppress is denied.

**II. PROCEDURAL HISTORY**

The matter was argued on 25 May 2010. The Court heard testimony from Dr. Ashley Emery, WSP Trooper Kenneth Denton, WSP Toxicology Law Quality Assurance Manager Jason Sklerov and considered multiple written exhibits. Those cases which have been noted for this hearing are not consolidated. However, the Court intends this decision to apply globally to breath and blood cases raising similar issues.

### III. FACTS

While an in depth understanding of the analysis and calculation of uncertainties is far beyond the scope of this analysis, an example testified to by Defense expert Dr. Ashley Emery is helpful for those of us less metrologically inclined. An item placed upon a digital scale will display a numeric value, let us say ten pounds. Dr. Emery testified that he cannot be 100% certain that the precise weight of the object is ten pounds. The precise weight might be 9.1 or 10.9 pounds as the scale may round up or down. The calibration, components and consistency of the scale must also be considered in developing an uncertainties calculation. The precise weight then lies between some range of weights surrounding the displayed value.

Once the variables surrounding a scientific measurement process are known, a metrologist can calculate and quantify the uncertainties applied to the measurement process. Uncertainty calculations are typically expressed as a 95% or a 99% certainty with the higher certainty reflecting a greater range. So, while the precise weight of our illustrative object may not be known, measurement uncertainties calculations can be performed and the weight can be expressed in terms of a 95% certainty it is between a range of results or a 99% certainty it is between a larger range of results.

Breath-alcohol and blood-alcohol test results are reported as a numerical value. According to the testimony of all three testifying witnesses, it is possible to calculate and report uncertainties for both types of testing and report the range to a 95% or 99% certainty.

### V. ANALYSIS

We now proceed to apply the concept of uncertainties calculations to the defense suppression motion. The admissibility of scientific evidence requires a two-part analysis. First, the proponent must satisfy the *Frye* standard. *Frye v. United States*, 293 Fed. 1093, *State v. Copeland*, 130 Wn.2d 244 (1996). Under *Frye*, scientific evidence should be presented to the fact finder only when the relevant scientific community has accepted the reliability of the underlying principles. *Copeland* @ 255. Second, under ER 702, the Court must determine whether the evidence will assist the trier of fact to understand the evidence or to determine a fact in issue. *State v. Cauthron*, 120 Wn.2d 879, 890 (1993).

Defendants do not challenge the general scientific principles underlying breath and blood testing for alcohol concentration and no *Frye* analysis is necessary. Defense argues that, under ER 702, breath and blood alcohol tests result reported without an accompanying uncertainties calculation are not valid scientific results and, therefore cannot assist the fact finder and should not be admitted into evidence.

In support of their proposition, Defense spent considerable time with Dr. Emery exploring the process of scientific reporting and the role of uncertainties calculations. Dr. Emery's testimony can be fairly summarized as follows - A scientist will not consider a measurement scientifically reliable unless that measurement includes an uncertainties calculation. According to Dr. Emery, such is the standard applied to peer review of scientific conclusions. However, this is not the legal standard for the admissibility of scientific evidence.

Under ER 702, the State must establish by a preponderance of the evidence that the scientific evidence they seek to admit will assist the fact finder to understand the evidence or determine a fact in issue. The current methodology employed by the Toxicologist for the reporting of breath and blood alcohol levels has previously met this threshold. While the evidence presented at this hearing demonstrates that the test results at issue could be presented within a range rather than as a specific result, the Court is not persuaded that failing to do so now renders this heretofore reliable evidence so unreliable that it does not assist the fact-finder.

## **VI. ORDER**

For the reasons set forth above, Defense Motion to Suppress is denied.

**DATED** this 1st day of June, 2010.

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Jeffrey D. Goodwin  
Judge - South Division District Court